

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. PR 06-0120

DOUGLAS R. BOESE,

Plaintiff,

v.

LAURIE McKINNON and SANDRA PEERS,

Defendants.

FILED

FEB 16 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Douglas R. Boese, appearing pro se, seeks to disqualify the Honorable David Cybulski from presiding in Cause No. DV 09-076 in the Ninth Judicial District Court, Toole County, pursuant to § 3-1-805, MCA. Boese has submitted an affidavit in support of his motion to disqualify Judge Cybulski, in which he states that, although he has been granted indigent status in the District Court, Judge Cybulski has been requiring him to provide two copies of all documents he files in that matter: one for the clerk of court and a second for Judge Cybulski.

Section 3-1-805, MCA, allows a party to any proceeding in any court to file an affidavit alleging facts showing personal bias or prejudice of the presiding judge. If the affidavit is filed more than 30 days in advance of the date set for hearing or trial, has been made in good faith, and is in proper form showing personal bias or prejudice, the Chief Justice will assign a district judge to hear the matter. If the affidavit does not meet the requirements of form set forth in § 3-1-805, MCA, and does not allege facts showing personal bias or prejudice, it will be set aside as void. Section 3-1-805(1)(c), MCA.

An affidavit for disqualification will be deemed not to have made in good faith if it is based solely on rulings in the case which can be addressed in an appeal from the final judgment. Section 3-1-805(1)(b), MCA. Here, Boese's allegations of personal bias or

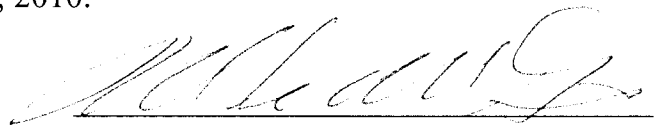
prejudice are based solely on Judge Cybulski's rulings in the case. As a result, it is unnecessary for the Chief Justice to appoint a district judge to hear the matter.

IT IS THEREFORE ORDERED:

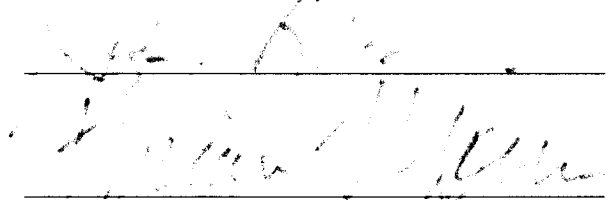
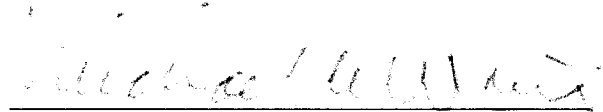
1. The request to disqualify District Judge Cybulski from Toole County Cause No. DV 09-076 is DENIED.

2. The Clerk is directed to provide copies of this order to the Clerk of the District Court of Toole County for notification to Douglas R. Boese personally and all counsel of record in Cause No. DV 09-076, and to the Honorable David Cybulski, District Judge.

DATED this 15th day of February, 2010.



Chief Justice



Justices